SUPPORTING MEMORANDUM

THIS COURT SHOULD GRANT RELIEF, NOT ONLY BECAUSE OF THE EXISTENTIAL THREAT TO THE INSTITUTION OF THE FAMILY, BUT THE VINDICTIVE IMPAIRMENT OF FREE SPEECH SO BLATANT IN THE ACTIONS OVER WHICH RELIEF IS JUSTIFIED

From the very beginning this criminal case was only instituted as a means to obstruct family justice and sever a father from his lawful child. The arresting officer was not only personally involved, he was mentioned by name in the family pleadings (FL-300 Initial FLHE1903610 @p4 Q10(2019)). The officer even admitted on the stand to filing a fraudulent warrant affidavit to fabricate cause for arrest (RTS 1437:13-23) – the alleged witness never once making such claims as furthered by the officers (RTS 777:20-23).

A. Vindictiveness Loud & Clear

The constitutional protection against prosecutorial and enforcement vindictiveness is based on a fundamental notion that it "would be patently unconstitutional" to "chill the assertion of constitutional rights by penalizing those who choose to exercise them" (US v Jackson, 390, US 570, 581(1968); Bower, 38 Cal 3d 865, 873(1985)). In the instant case – nobody could even agree on how to charge the petitioner, let alone the basis for those charges being brought.

Throughout the proceedings, petitioner as defendant was subjected to a continued variance in charging concepts... Arrested first on the notion that "filing a lawsuit was a violation of restraint" (allegedly in place "to prevent such action") (Initial report on arrest; also, RTS 1436:6-11 [testimony reading report into the record]) – petitioner was charged with 'Stalking' (Cal Pen § 646.9). That charge was coupled with two counts, first alleging petitioner had filed a 'False/Forged Instrument' (Cal Pen § 115) over an allegedly false 'Proof of Service', and one count of 'Perjury' (Cal Pen § 118) in tandem (over the same issue). The initial complaint depicting these 3 charges (CTS 16-17) clearly lists the dates surrounding the filing of the lawsuit, clearly seeking to criminalize the right of access..

As stated, at trial, the officer would admit to filing a fraudulent warrant affidavit fabricating probable cause for arrest (RTS 1437:13-23). While the narrative – completely irrelevant in the criminal sense – furthered the criminalization of ones right to petition through a fairy tale narrative making it seem as if filing a lawsuit was an act of harassment, and that the petitioner was not qualified to believe in the allegations he made in that lawsuit … simply because his legal adversary didn't agree with them; the only legitimate question of cause lay in the officers reported identification of a witness to forgery - of the "Proof of Service" – the very notion that the officer admitted to be false (IBid). The officers conflict of interest and beneficial party in the status in the civil proceedings were deemed "irrelevant" by the court (See n1; also RTS 975:7-976:4 [impeachment of officer desc. arrests effect on civil matters, acknowledgment of parentage, intent to obstruct and committ perjury]).

---

n1 – The legally irrelevant is permitted while the relevant is excluded on the mere basis that it supports the narrative that can find bias in opinion.

B. Vindictiveness at Initial Arraignment & Restraint

At the initial arraignment, criminal restraint was requested and to include the petitioners claimed child(ren)(CTS 22-25). This despite a single “Proof of Service” having nothing at all to do with the underlying merits of a civil action or parentage (*Cohen,37 Cal 4th 1048,1058,1062-63(2006)[litigation privilege & jurisdiction imparted by lawful service];also,Bartlett,200 Cal App 3d 1457, 1466 (1988)[conferring jurisdiction, improper service may give rise to counter claim for damages, but does not dispose the merits of the underlying case in which improper service may have occurred]*). This was simply **a means by which to sever communication between presumed father and child** – which the record would clearly show was used for said purpose and to assist in the alienation of child(ren) and spoilation of testimony.

The prosecutions unjustified act of targeting "contact" between the child and petitioner shows extreme personal vindictiveness. For it was the notion that "contact" alone gave petitioner a rational basis on which to lawfully claim the child(ren) and protect the integrity of their psychological development that fueled said prohibition--meaning, clearly, that officer(s) knew exactly what they were mis-using the criminal system to do. Obstruct paternity and the parental relationship legally present, to aid in winning for personal reasons rather than the protection of the innocent.

Trying to jerry-rig cause "after the fact" to declare paternity outside of the family jurisdiction was both improper and immoral. It constitutes a taint, and legally placed the veracity of the conviction into question. As has been claimed, these acts were conducted solely to allow a favoured party to prevail in civil proceedings. The legalities against listing non-victim minors on criminal restraint were ignored (*Dela Rosa-Rauda, 227 Cal App 4th 20, 215 [holding non-victim minors, even those children of a legitimate victim of violence, do not belong on a CPO unless they have been the victim of violence themselve's or have indured a credible threat];See also, Counterman,600 US 66,71(2023)[a credible threat must be knowing and intelligent, not inferred arbitrarily]*). Petitioners movements were denied (*CTS 247-273 [MX to Set-Aside Restraint "Rauda"]*)... Ignorance was feigned, and the family courts orders to protect contact between father and daughter (FLHE1903610) were circumvented and unlawfully obstructed without cause.

While it can be argued that the gravamen of the prosecutions case at arrest - on paper - was that defendant abused the family process by "filing a lawsuit while under restraint" and for the purpose of "harassment", presumed by the alleged "forging of the signature" on a "Proof of Service" and to "fraudulently gain custody" -- such was a ruse. No witness to the forging or filing of any document ever existed, and petitioners behaviour in response to a claim of no service (the most common claim in civil courts) was neither criminal or suggestive for the purposes of probable cause (Flores,15 cal 5th 743,749(2024)[probable cause requires more than mere presence]). Even so designated, continued charge required ignoring the 20 or so services properly conducted in the corresponding civil action, and petitioners appropriate behaviour in court, assuring the questioned service be repeated (CTS 492 [Personal Service Conducted by New Processor, describing also attempt by district investigators to obstruct]) and awaiting the family courts instruction for mediation, were, at all times, supported the maxim that, simply, "The law has been obeyed" (Cal Civ 3548). No probable cause could have been supported.

C. Variances For Preliminary Furthering Prejudice & Vindictiveness

The leadup to prelim saw the addition of a 'Kidnapping' charge (Cal Pen § 207). While submitted as part of the standard prelim penalty (n2) it has been alleged since day 1 to be another ploy to ensure pre-trial restraint was not taken if the child(ren) could not be listed as direct or inferred victims (RTS 328:25–329:28 [describing complete irrelevance of child testimony and involvement for theatrical purposes]). At prelim itself, the process server whose name was listed on the allegedly false POS form testified to nothing more than a withdrawal of service.. The processor admitted to having claimed completed service and ownership of the signatures thereon. A declaration that continued until threat of arrest and "fear" of legal action (CTS 28:12–20). Processor clearly testified they were NOT a witness to forgery of any kind (CTS 154:12-16). They, in fact, tried to serve the documents (CTS 144:01-02).

The choice to declare service was a personal one... as was a choice to withdraw service on fear of legal action (CTS 154:12-20). At no point did petitioner ever intimidate or pressure the witness to testify in any way (CTS 152:22-24). Petitioner never asked for or coerced a decision (CTS 149:08-14). Prosecutor then made a vindictive argument, singling out petitioners family name and claiming the name was "fake" (CTS 163:4-24) and that despite the proper notice and certificate of identity to the courts at the time of that case' submission – usage was somehow a crime (CTS 163:4-24). Prosecutor then claimed that every signature on every motion or paper was a separate "115" (Cal Pen § 115) and that continued appearance in family court was unlawful, justifying forgery and perjury charges (CTS 183:13-15). Petitioners continued laughter duly noted in the record (iBid) The court iterated leave to amend (CTS 183:16-17).

As if the presumption of vindictiveness weren't already met, the prosecutions denial of petitioner his family identity would turn out to be nothing morge than a aggressive and sadistic ploy designed to alienate and illegitimize by inference. Petitioners name having long been held to be his legal and valid name (101 Ops Atty Gen 76(2018)) the prosecutions actions not only violated statute (Ie, Cal Civ 51), it inflicted severe emotional distress and the questioning of his own identity, which, coupled with the separation of a child, would inflict irreparable harm.

Despite the iterated intention to prosecute petitioner for his name, prosecution instead filed an information with 13 additional charges listing random dates and "Proofs of Service" that didn't exist in the record (CTS 186-193). Despite request for demurrer, petitioners counsel, already a conflict panel attorney, would declare his unwillingness to object and on the basis that he "has to work with these people" (E07Xxxx) - petitioner, would then move for dismissal pro-se (CTS), which was denied without an appropriate statement of cause.

---

n2 – The "Prelim-Penalty" refers to an adopted standard by prosecutors across the nation and a prolific policy in California to add charges of any possible nature, whether or not justified, in order to attempt to force by instilling fear, a resolution by plea of guilt to lesser charges.

D. Mid-Trial Variance Instead of Acquittal

Prosecution rested at trial once again claiming that filing a lawsuit constituted harassment, and that restraining orders allegedly prohibited such access to the courts (id). The petitioner countered that the impeachment of the process server, investigators and arresting officer demonstrated an unlawful arrest and vindictive prosecution, that criminal charges could not exist over the exercise of constitutional rights. Even legitimate criminals with lengthy criminal histories cannot have their history used to support inference against the exercise of a fundamental right, or the intent by which that exercise was pursued. Whose to say the right to petition, free speech and association would not be used by an ex convict seeking to do things the right way? (US Const., Amend. 1). Petitioner further highlighted that the charge sheet listed 13 counts over allegedly false "Proofs of Service" which did NOT exist in the record of that action, save one, and that one being a proof of service filed by the investigator (10/17/19-FLHE1903610). Petitioner provided the clerk's certified transcript, confirming no such documents existed (CTS 186-193) and moved for acquittal (CTS 1169-1174)

In response, the court denied acquittal, and after conferring with the prosecution, amended the charges to include 'stalking' based on the petitioner's peaceful Facebook posts. Additionally, the perjury charges, along with allegations of false or forged instruments, were revised to reference various privileged documents (motions, replies, traverses) filed in the civil action (n3). The court justified this amendment by asserting that the petitioner failed to prove paternity beyond a reasonable doubt. The mother's admitted punishment of the children (RTS) and the spoilation of testimony by state officers assisting in acts of alienation was ignored (Exhibit H). The fact that petitioner met almost every legal presumption of parentage, and that paternity was decided on a standard of preponderance (a significantly lower bar) - was ignored. Petitioner was then convicted and sentenced to 25 years in state prison on a charging variance he was never given due notice of, or even capable of even arguing in a criminal jurisdiction, while the same matter was still awaiting trial in family court (n4). The severity of sentence was recommended by the state on the basis that "petitioner would seek a DNA test from the family court.... if released" (CTS 1037).

_____

N2 - The required need to confer, discuss possible ways in which to continue charging Petitioner when an acquittal was justified is a pure display of vindictiveness. Petitioner continues to exercise his right to free speech (x.com/rgood905)

N3 - Whether a man is a father is not based on the opinion of the mother or the child. It is based upon the evidence of commitment, familiarity and care (Cal Fam § 7601-13). In the instant case, the children had ongoing contact from no earlier than 2011 based on evidence presented by prosecution. Knew the defendant, and admitted they were punished and being told he wasn't their father. Defendant was not allowed to recite such law, and could not argue a relative opinion while the same question remained pending in the family court. The criminal courts can not justify a conviction on a relative opinion and on a question legally precluded from criminal jurisdiction.

N4 - at trial, it should be noted that the process server admitted to filing the document with the court (RTS 761:23-762:2) and was impeached on testimony of petitioners presence/awareness

(RTS 791:19-22 [wit. Claims I'm there and told no service occurred];1217:7-26 [RSO says I'm in custody on those dates... impeachment]).

E. Conclusion

Aside from the above, prosecutions line of questioning admitted the vindictive and selective nature of the proceedings, clearly conveying that it was petitioners refusal to deny his daughter and his continued intent to appear in family court that they were criminalizing (RTS 1415:16-17). Such alone is reversible error justifying reversal and acquittal. No evidence of filing or forgery were presented, no evidence of perjury can be cited aside from the RELATIVE opinion of the witnesses, all of which being the legal adversaries of the petitioner and beneficially interested parties in outside cases.

The petitioners physical ALIBI covered all alleged actions entered as 'conduct' evidence (CTS 1244 [Timeline of events and ALIBI]) and the process server in question ultimately admitted to filing the allegedly false documents (RTS).

The vindictiveness is blatant, and the acts of the prosecutor appearing in civil matters, such as the attempt by petitioner to Garner restraint on behalf of his daughter (CTS 1173), and the filing of fraudulent declarations in family court to try and get petitioners visitation orders dismissed (Exhibit H) which show the willingness of these state actors to act as personal counsel in civil matters and for favoured parties-- aren't even required to justify relief. Even with the name, the court of appeal made a statement in their opinion about the agreed use of "TAFOYA" as defendants name, acting as if the entire trial was not about the leave granted for additional charges at prelim, such is an inference without reasonable justification. Petitioner was denied his identity, repeatedly told he didn't exist, and that denial - knowingly done as a means to break the will and solidarity of a law abiding citizen constituted reversible prejudice (See Zarazua,85 Cal App 5th 639,642(2022)).

II

THE APPELLATE COURTS DENIAL OF RELIEF & AFFIRMING A CONVICTION USING A FALSE STATEMENT OF FACTS - EVEN QUOTING IMPEACHED TESTIMONY & INFERRING GUILT OF 1101 EVENTS AS IF THOSE ENTRIES WERE THE BASIS FOR CHARGE & ARREST; IGNORING & NEVER ONCE MENTIONING THE UN-IMPEACHED ALIBI PRESENTED IN RESPONSE THEREOF & NEVER NOTING THE PROCESS SERVERS ADMISSIONS OR IMPEACHMENT - WAS IMPROPER & REPRESENTS A MISCARRIAGE

A. The adopted Statement

See attached (Exhibit B)

B. Conclusion

The opinion does not conform to the record. Additionally, the record remains incomplete and meritorious questions were not raised by counsel appointed, constituting ineffectiveness. The points and citations to the record above being so absent, are here incorporated in support of the above point of contention. The information entering trial was defective, multiple charges resulting over a event on which no jurisdiction exists (Paternity) or no evidence of guilt (Forgery) was proffered - the elements of the charged crimes were not met, and the jury was ill-suited to enter a judgement... especially when they could not differentiate a chargeable document (See Cnt. 10 reversal).

III

THE DISTRICT COURT OF APPEAL DID NOT HAVE DISCRETION TO DENY THE PETITION FOR RELIEF IN E084312, ITS REQUEST FOR SANCTIONS WITHOUT HEARING OR ADOPT A PATENTLY FALSE STATEMENT OF FACTS IN ITS OPINION FOR E079488 HAVING BEEN ON NOTICE

In denying the prima-facie justification made in E084312, the court abused its discretion (Cal Pen § 1437,et seq;cf,Cal Civ Proc § 1085, et seq) and the panels subsequent adoption of a statement of facts that does not even align or correlate to the record on appeal... Violated petitioners right to due-process and a fair and complete review (US Const., Amend. 5,14;Cal Const. Art. 1 § 7). Despite being on notice of this issue, sanctions were denied (Exhibit I), the petition in E084312 ignored, and the direct appeal in E079488 becoming the latest in a long line of rubber stamping slander. The courts opinion upsets more than 100 years of precedent and even the most recent findings by the United States Supreme Court (Counterman,600 US 66,71(2023)) - justifies stringent review of all claims independently and cumulatively - which are here again incorporated by reference to the extent required - petitioner having no means of a complete provision and the difficulties necessarily faced by being incarcerated.

Pursuant 28 USC § 1746 - I declare the above as true under penalty of perjury

_____

Robert Michael Vanleeuwen